

IMPRISONMENT ⁴

FOR

DEBT,

UNCONSTITUTIONAL,

By *EDWARD FARLEY, Esq.* *K*

THE SECOND EDITION.

“ The Body of the Debtor shall always be free, that he
“ may serve the King in his Wars, cultivate the
“ Ground, and maintain his Family.”

THE CONSTITUTION.

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TO THE
ENGLISH NATION.

WHEN I printed my first edition on Imprisonment for Debt, I closed the subject with this *exhortation*, it being then the remarkable year of 1788. And now if the people will obey the command of God, and humble themselves before the throne of righteousness, it may please the Almighty to restore the King to his health, and the people to their senses; and finally to crush oppression, and let justice and mercy rule the land. The King at that time laboured under a derangement, but I thought the people mad, for there was no kind of management in their proceedings; they say they have an excellent Constitution, but

there is not a County in England, but has a prison to hold oppressed innocence, whilst their oppressors walk at large : Divine Providence did more than the Doctors expected, the King recovered, and now for the consequences ; a procession to St. Paul's took place, which was pleasing to heaven, and every honest mind felt the propriety of it ; my eyes were intent on the King's *virtuous Minister* after he had him again under his advice ; I expected proclamations one after the other of an entire new construction, if it had been only out of a little *gratitude*. First I thought the debtors would have been liberated, with a present of five guineas each, to enable them to appear decent, and the law be directed against the property, instead of the person ; next I expected an act of grace to pardon all offences except cruelty, under the *impression* that if care had been taken of the morals of the people, and they had not been drove to distress, that crimes would not have been committed ; then I expected all members of both Houses of Parliament would have been required to attend their duty and know what the business was before they gave their votes, and that the Judges would be
desired

desired to study constitutional law. That the Bishops and rich Clergy would be ordered to do duty themselves, and the poor Clergy put upon a more equal footing; in short, I conceived, that as God has abundantly supplied all his creatures with the necessaries of life, that the King's Minister would suppose that there was a *particular obligation* for the people to enjoy their *rights*. I however by degrees found myself disappointed, our beloved King's recovery was made use of on all occasions for oppression, taxes were encreased and influence made stronger, and the national honour when it could have shewn itself in the case of Stanislaus, the honest King of Poland was kept back; but when oppressed Frenchmen thought they had a right to enjoy the comforts of life without a King, if they could not with one; then the power of this country was exerted against a nation's free opinion; and because the French cut off the head of a perjured Monarch, this country continued the war to put in on again; I pitied the ill-advised Louis, the man was no tyrant in his heart: but perhaps our Ministers think ill advice to a King, not quite so material as the people sometimes do: my
business,

business, the abolition of Imprisonment for Debt did not seem to get on; a flaming patriot promised me every support in his power, as he was convinced it was an object of great national concern; but I found him *rather tardy*, and him nor his friends did not try to get me an honourable seat, although if they had taken my qualification back again, I might have got a clerk's place to a Banker or Merchant, who would have found it worth while to allow me five hundred a year to frank letters; I took an unfortunate method of getting on, by introducing my book to the Members of both Houses of Parliament; the majority of whom on a subject of Reform, seldom read more than the title page; one noble Lord says to his servant, What is that book about? law, my Lord! I will have nothing to do with it, it is worse than the gospel; another says, if he brings any more books here, I will put them behind the fire, so that I began to be in a little passion at not getting a step forward, and therefore was determined to do my business at once by writing the underneath Address to the Parliament, in that sharp looking paper the Argus.

TO THE
PARLIAMENT
 OF
GREAT BRITAIN.

Address printed in the Argus, April 12, 1792.

“ MY LORDS AND GENTLEMEN,

THE English Nation begin to verify the German proverb, “ The greater the distress, the nearer to God.” The people have long looked up to their Parliament to redress their grievances, and ease their burdens; but instead thereof, they have beheld year after year an accumulation of oppression, and fresh insults upon their rights; at length their souls recoil within themselves, and pour out their complaints to that divine power, who is now enlightening the minds of all mankind: this once happy country, may debate the beginning of its ruin to the ever to be lamented American war,
 when

when millions were spent, and the face of the earth stained with the blood of father and son, forced to murder each other to gratify the avarice and ambition of Statesmen ; from that fatal time to the present, has heaven frowned upon this land, and its rulers have had power to oppress the people, and crush out the lives of the poor by secret barbarous ways : it is not enough that distress has crammed the gaols throughout England, colonized Botonay Bay, and glutted the gallows, the prospect which presents itself to the middling and lower orders of people, is, that those who have not yet gone that road must expect to follow, old age goes down with sorrow to the grave, and the children succeed to their parent's misery ; the nail of oppression that has been driven by government, is clenched by the law ; and were the tax gatherer has taken the bed from under the industrious poor, the bailiff has followed, and snatched as his prey the unfortunate inhabitant ; suicide has caused some disappointments, but our gaols, groaning hospitals, and poor houses shew their full complement : There wants not the wand of Asmodeus, to unroof the dwellings of poverty and sickness, the iniquitous

writs

writs of *trespass* and on the *case* drive from the pursuits of honest industry, thousands of miserable Englishmen to open view, who sculk about the boasted land of liberty, where their bread is denied them; but what must be their feelings, when they read the praises bestowed upon the excellence of the British Constitution, by the most celebrated Orators in Parliament, at the same moment that they are deprived by the law, of what is most valuable, their liberty, and the protection of their families! some who have no dear pledges of affection to detain them, fly from this law ridden country to the gallic shore, where policy now takes place of despotism, and a brave and generous nation, opens its arms to receive the persecuted subjects of mislled governments.

My Lords and Gentleman, the country people think, that Magna Charta was some fine old General who had done great services formerly, but they know of no benefit they derive from him at present; and least law Lords should think it obsolete, it is necessary to observe, that the Constitution declares it to be a sacred charter of the peoples liberties,

which

which shall live for ever; by it a British Subject is protected in his liberty, and property, unless he has committed a felony to the conviction of his peers; a solemn curse is denounced against whoever shall dare to violate it; and however, imprisonment for debt is suffered to prey like a vulture on the vitals of all who are not in parliament, I trust the day is not far off, when the humble latch of the poorest cottage, shall be as safe from the hand of ruffian violence, as the Palace Gates of the proudest Peer."

The public may suppose this Address to the Parliament would have had some effect, but the members paid no more attention to it, than if I had sent the bible; I am therefore under the necessity of writing to my countrymen at large, and this is a *fine remedy* to be sure; but perhaps Mr. Smith thinks otherwise; however, I am come to this determination, that if my countrymen will not serve me, I will them, and therefore I take the disagreeable task of repetition in hand, by again laying down the law for recovery of debt, and pointing out the protection every person is entitled

entitled to, at the same time I now tell the King, Lords and Commons, that I desire I may have *no further trouble in this business*. Let the privy-council recommend an honest man to the King for his Minister, who will put the Constitution on its *base* instead of its *pinnacle*, sue to France for peace, and build a bridge of affection from Dover to Calais;—finally, I command all people to love one another.

THE CONSTITUTION OF ENGLAND

IS A GOOD ONE.

The legislative powers of the King, Lords, and Commons, is a grand degree of check one, on the other, that is honourable to a great nation.—*Abuses must be rectified.*

The law of England is common law, there shall not be two laws, one for the rich, and another for the poor.

The law is the perfection of reason, for nothing that is contrary to reason, is consonant to law.

Common law is common right, which shall be had without expence, for no officer under the [King shall take any thing for doing of his office, only of the King; *that justice may not be bought.*

The law gives a remedy for every wrong.

The ignorance of law cannot excuse.

Statutes shall be interpreted by reasonable construction, according to the meaning of the legislator.

The exposition of the law belongs to the Judges, who are guilty of treason if they construe them falsely.

They must be construed, that no innocent man receive damage.

Acts of Parliament that are against reason, or impossible to be performed, shall be judged void.

No law can be abrogated but by Act of Parliament, but no Act of Parliament can repeal Magna Charta, or alter the fundamental principles of the Constitution.

Bracton on the Common Law of England, says, "They are divinity built in the hearts of men," and Britton, Glanville, Littleton, and Sir Edward Coke, say, that where the subject is injured, and has not redress; that it is not the fault of the law, but the false construction put on it by the judges: whose wicked advice has often been a great hurt to many of our Kings. We find it recorded, 77 inst. "Trefilian, Chief Justice of the King's Bench, and five judges more, with one of the King's Serjeants at Law, were executed at Tyburn as false traitors, by a judgment from the most supreme Court of judicature in the kingdom, the parliament, for delivering their extravagant, illegal, and extrajudicial opinions, that the King might avoid a statute, ordinance, and commission, which had been made for the safety of both King and kingdom."

Thus we see how cautious our ancestors were, to provide for the safety and good of the King, and subject; for they could not avoid leaving the explanation of Acts of Parliament to the Judges, yet if they gave extrajudicial opinions, they were liable to be impeached and executed as false traitors; nor is it to be wondered at, that Alfred who was a wise Prince, and stiled *Anglicarum Legum Conditor*, should execute twelve Judges at one time, for endeavouring to subvert the good laws of the land. After the death of this great Prince, the succeeding Kings introduced foreign laws, and customs, too grievous to be borne; so that the kingdom was involved with continual wars, for a great number of years; and the good laws of the land were frustrated by arbitrary power. In the reign of King John, that tyrant carried his arbitrary measures so far, that the Barons of the realm were obliged to take up arms against him; and after long struggles for power on both sides, John not being able to prevail against the Barons, sent for them to meet him at Runnymede, between Staines and Windsor; when he
there

there confirmed the rights and liberties of the subject, in a charter called Magna Charta, as likewise the charter of the forests: but this security to the subject lasted in his reign, no longer than whilst the barons kept a check over his conduct.

King Henry the Third succeeded his father John, and at his coronation took an oath, to restore to the people all their rights and liberties, and confirmed the charters granted by John; but afterwards he acted the tyrant, and broke through the laws of the land, which compelled the barons again to have recourse to arms; and having conquered the King's forces, they would not make peace, unless their liberties were very solemnly confirmed: and the barons having amended the charter of King John. King Henry, in the 37th year of his reign, came to Westminster Hall, and in presence of the nobility and bishops with lighted torches in their hands, Magna Charta was read; the King all that while laying his hand on his breast; and at last solemnly swearing, *faithfully and inviolably*

to observe all the things therein contained, as he was a man, a christian, a soldier, and a King. Then the bishops extinguished their torches on the ground, and every one said, thus let him be extinguished, and sink in hell, who violate this charter. Upon this the bells were set a ringing, and all persons by rejoicing approved of what was done.

The solemn preamble of it is, That it is made for the honour of God, the exaltation of the holy church, and amendment of the kingdom, &c. it is divided into XXXVIII Chapters; the XXIXth Chapter is the security of an Englishman's personal liberty, and whatever militates against it, is treason.

Magna Charta, Chapter xxix.

No freeman shall be taken,
or imprisoned, or disseised of his
free-

freehold, or liberties, or free customs, or be outlawed, or exiled, or any way otherwise destroyed; nor we shall not pass upon him, but by the lawful judgment of his peers, or by the law of the land; we will sell to no man, we will not deny or defer to any, either justice or right.

This sacred charter is the substance of common law, contracted in such a manner, as to be signed and confirmed by a sovereign, and to be handed down to posterity, as a noble record of English law and justice. It is true, Henry swore for himself and successors, but from him to the present King, a coronation oath is administered, wherein he swears to maintain the great charter, and all rights and privileges, it is declared to be the common law of the land,

after

after statutes say, "The words of the great charter shall live for ever." 44 statutes declare, "*That any thing contained in them, or any other act that militates against the great charter, shall be holden for nought.*"

The word *great*, is owing to a lesser charter of the forrefts, being signed by King John at the same time, but public writers play upon the word, and indeed with some degree of propriety. Blackstone in his commentaries, after observing the excellence of the first part of this charter, says, "*And lastly (which alone would have merited the title which it bears of the great charter) it protected every individual of the nation in the free enjoyment of his life, his liberty, and his property, unless declared to be forfeited by the judgment of his peers, or the law of the land.*"

The closest words in which I can put the XXIXth Chapter of this charter is. "*No innocent man shall be destroyed.*" This is its exact meaning; for if the English Constitution does not protect an innocent man, it is worth
nothing

nothing, it is better to abolish it, and make a new one; but I am well convinced that it does, and that the writ of *trespass* issued against the body of the debtor, is a fictitious proceeding, contrary to every principle of law, justice, and humanity. Before I proceed to establish this point, I must take notice of my quotation from the statutes in my title page. *The body of the debtor shall always be free, that he may serve the King in his wars, cultivate the ground, and maintain his family.* It may be said this is an unjust war, this I readily grant, but to this position, I observe, that at the time our Ancestors established the principle, the kingdom was liable to the invasion and inroads of Danes, Normans, Picts, and others, which made it necessary for the King to hold his subjects in readiness; and the barons were obliged by law to keep their castles in repair, and perform Knights Service; the two next positions, "Cultivate the ground and maintain his family," is sufficient to remove every idea of its being *intended* to be an instrument in the hand of despotism, whatever use it *may have been made of*; I know, that to man the

navy last session, a bill was passed to protect all that entered from being taken out of the King's service for debt, but there was no occasion; for every person is entitled to the same protection of the law, which the members of the two houses of parliament enjoy; and which the King takes upon himself to grant, without any Act of Parliament: the birthright of Englishmen, is, that every man is under the protection of the law, and that the law of England is common unto all; and that there shall not be two laws, one for the rich, and another for the poor.

The iniquitous practice of imprisonment for debt, does not regard, whether there is any debt owing, a rich man that takes a fancy to a poor man's wife, has only to arrest him for a debt he cannot bail, and he gains his ends; to make the husband's situation worse, he sends him his children because he has not bread for himself; and the wife is no where to be found. A particular instance of a man's being arrested who did not owe any thing deserves to be noticed.—One of those pettyfogging Attorneys with

with which this metropolis swarms, being in company with one of his understrappers, saw a gentlemen in the street, whom he had a slight knowledge of; he told his companion he could put a hundred pounds in his pocket; the other answered he would do any thing for such a sum except murder: they then followed the gentleman to his Inn; the attorneys assistant made an affidavit of three thousand pounds debt against the gentleman; the Attorney had him arrested, and carried to a lock-up-house; the poor gentlemen felt the fatal consequence of walking London streets, the seat of *law and justice*; he could not procure bail, and therefore sent a gentlemen to a judge to represent his case; the judge told him that nothing could be done out of the usual course of business. The country gentleman was so frightened to stay longer in confinement, that he sent for the pretended plaintiff's Attorney, and gave two hundred pounds for his discharge—*such business as this, makes oath-taking a lucrative trade.* Lord Camden, when president of the council, told me he hoped these cases did not occur often; my

reply was, only every day in the week except fundays, at one part or other of the kingdom : that it should happen at all, that any man should by taking an oath, for which a man may be hired in England for half a crown, should have it in his power to arrest, and throw into gaol, an innocent man, is the highest insult to the laws of the country ; but few Frenchmen were suspended in cages in the Bastile of Paris, yet the dread of what every man was liable to, was sufficient to prудuce a Revolution ; and if there were not protections against imprisonment for debt in England, I am certain a Revolution would have taken place long before now, the members of the two houses of parliament would have been the first to have drawn their swords ; the peers claim their privilege by *birth* ; the commons claim by their speaker, the first day of the sitting of every new parliament, a privilege from arrest from the King ; which the King always grants, or he would be obliged to meet his parliament in the King's Bench.—*A mean scandalous exemption* from an iniquitous practice, which all the rest of the nation is to groan under, in defiance of that Constitution they swear to maintain.

CONSTITUTIONAL LAW,

FOR

RECOVERY OF DEBT.

SIR Edward Coke, first Chief Justice of the Court of Common Pleas, and afterwards Chief Judge of the King's Bench; and Sir William Blackstone, Chief Justice of the Common Pleas; the two greatest law authorities, have clearly laid down the proceedings for recovery of debt, *all other is illegal.*

The Court of Common Pleas, is the only general court in the kingdom for pleas of debt, between subject, and subject; all lesser courts, such as County Court, Sheriffs Court, Court
Hundred,

Hundred, &c. have their appeal to that highest court of law for recovery of debt. Magna Charta says, "The Court of Common Pleas shall be held in a *certain place*;" therefore it is fixed at Westminster, as the centre of the kingdom, that every person may know where to apply for recovery of property; for before that time, it used, like the Court of King's Bench, to remove at the pleasure of the Justices of the court, or of the King: but the Court of Kings Bench continued to move after the King, because it was presumed the King was always present in person, all writs issuing out of that court, runs thus to this very day, "*bring the body before the King himself wherever he shall then be.*" Therefore to prevent any actions for debt being brought into the King's Bench, it is ordained by statute law, "*No Pleas shall follow our Court.*" And the reason must be obvious to every man, that it must have been a great detriment to persons suing for debt, to follow the King from county to county, before they could obtain justice; besides the Court of King's Bench, being a court established to take cognizance only
of

of crimes and trespasses, in which the King was a party concerned (as the protector of every man to his law) it would have interfered with its jurisdiction, to have intruded upon it actions of debt.

The Court of Common Pleas being the only general court in the kingdom for debt, here follows its proceedings.

COURT OF COMMON PLEAS.

ORIGINAL.

" George the Second, by the grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth; to the Sheriff of Oxfordshire greeting. Command Charles Long, late of Burford, Gentleman, that justly and without delay, he render to William Burton, two hundred pounds, which he owes him, and unjustly detains as he saith. And unless he shall so do, and if the said William shall make you secure of prosecuting his claim, then

sum-

summon by good summoners, the aforesaid Charles, that he be before our Justices at Westminster, on the octave of St. Hilary, to shew wherefore he hath not done it, and have you then there the summoners and this writ. Witness Sir John Willes, Knight, at Westminster, the twenty third day of January, in the twenty eighth year of our reign."

SHERIFFS RETURN.

I have summoned the within named
Charles Long.

Pledges of } J. DOE. { Summoners of the with-
prosecution. } R. ROE. { in named Charles Long.

R. MORRIS.

H. JOHNSON.

The Sheriff believing William to be a man of good fame, puts in the fictitious names of J. DOE, and R. ROE, for his security to prosecute; but the Sheriff had a discretionary power respecting the security, he was to prosecute; for he was to take *good security*; but every reasonable man
will

will allow, that as the debtor was only to be summoned into court, the Sheriff might without any hurt to justice, put in a fictitious security, and it was meant by law, that both parties should be present in court; but in consideration, that a man might not be able to speak in court, or that his concerns were more urgent elsewhere, he was allowed to appear by his friend or attorney, which was as fair for one as the other. If the defendant appeared, then his appearance is recorded, and he puts in sureties for his future appearance, the same fictitious names of J. DOE, and R. ROE, that were pledges for the plaintiffs prosecution.

The defendant before he pleads is allowed one imparlance, to see if he can end the matter amicably, by talking with the plaintiff; which custom is supposed to have arisen from a principle of religion. "*Agree with thine adversary quickly whilst thou art in the way with him.*"

The defendant may also demand oyer of the bond, or speciality, upon which the action is brought: i. e. to have it read to him, the de-

E

fendant

fendant in time past being supposed not capable of reading it himself; after which the whole is entered verbatim upon record, and the defendant may make objection to any part of it, not stated in the plaintiff's declaration. When these proceedings are over, the defendant must put in his plea or excuse.

Pleas are of two sorts, dilatory pleas, and pleas to the action; dilatory pleas are to the jurisdiction of the court, alledging it ought not to hold plea of this injury, it arising beyond sea, &c. or to the disability of the plaintiff, by reason whereof he is incapable to commence or continue his suit, as that he is an alien, enemy, outlawed, excommunicated, attainted of treason, or under *preamunire* not in *rerum natura* (being only a fictitious person) an infant, a femme covert, or a monk professed, or in abatement, according to the circumstances of the case. It is however very just that by statute 4 and 5 Ann c. 16. "*No dilatory plea is to be admitted without affidavit made of the truth thereof.*"

A plea

A plea to the action is to answer the merits of the case: this is done by confessing or denying the truth of the complaint; a plea of set off, or *cognovit actionem*, is when the plaintiff is indebted in part, if the plaintiff sues for ten pounds due on a note of hand, the defendant may set off nine pounds due to himself; and in case he pleads such set off, he must pay the balance into court. Statutes 2, George II. c. 22 and 8, George II. c. 24, enacts, “*That where there are mutual debts between the plaintiff and defendant, one debt may be set against the other, and either pleaded in bar, or given in evidence upon the general issue at the trial, which will operate in payment, and extinguish so much of the plaintiff's demand.*” Pleas that totally deny the cause of complaint, are either the general issue or a special plea in bar. The general issue, or general plea, is what denies at once the whole declaration, as *nil debit*, he owes nothing; *non est factum*, it is not his deed; or, *non assumpsit*, he made no such promise. Special pleas, are various, according to the circumstances of the defendant's case, as in real actions a general release, or a fine, or an accord, arbi-

tration, or some other fact which precludes the plaintiff from his action; also the defendant may plead the statutes of limitation.

Issue, *exitus*, being the end of all the pleadings, is founded either upon matter of law, or matter of fact. An issue upon matter of law, is called a *demurrer*, and it confesses the fact to be true, as stated by the opposite party; but denies that by the law arising upon those facts, any injury is done to the plaintiff; the opposite party, aver there is, which is called a *joinder in demurrer*. The justices of the court determine this matter.

Issue of fact, is where the fact only, and not the law is disputed; and when he that denies the fact declared by his antagonist, tenders his issue, he says, "*and this he prays may be enquired of by the country*", and his antagonist does the like; which done, the issue is said to be joined, both parties having agreed to rest the fate of the cause upon the truth of the fact in question: then the court awards a writ of *venire facias* upon the roll or record, commanding the Sheriff, that he
cause

cause to come here on such a day twelve free and lawful men, *liberos et legales homines*, of the body of the county, by whom the truth of the matter may be better known; and who are neither of kin to the aforesaid Charles, nor the aforesaid William, to recognize the truth of the issue between the said parties.

All previous steps being regularly settled, and the cause called on in court; the record is then handed to the justices of the court to peruse, and observe the pleadings, and what issue the parties are to maintain, and prove, while the jury is called and sworn. To this end the Sheriff returns his compulsive process, the writ of *habeas corpora*, or *distringus*, with the pannel of jurors annexed to the justice's officer in court.

When a sufficient number of persons impannelled appear, they are then separately sworn, well and truly to try the issue between the parties; and a true verdict to give according to the evidence.

All

All witnesses that have the use of their reason are to be received and examined, except such as are infamous, or such as are *interested* in the event of the cause; all others are *competent* witnesses, though the jury, from other circumstances will judge of the credibility.

When the evidence is gone through on both sides, the justices in presence of the parties, the counsel and all others, sum up the whole to the jury, omitting all superfluous circumstances, observing wherein the main question and principal issue lies; stating what evidence has been given to support it, with such remarks as they think necessary for their direction, and giving them opinion in matters of law arising from evidence.

The jury after the proofs are summed up, unless the case is very clear, withdraw from the bar to consider of their verdict; and in order to avoid intemperance and causeless delay, are to be kept without meat, drink, fire,
or

or candle, unless by permission of the court, till they are all unanimously agreed.

When they are agreed, the jury return back to the bar, and by their foreman deliver their public verdict, which in the present instance, they shall have found the issue for the plaintiff in two hundred pounds debt, and fifty pounds damages: the judgment is then entered on the roll, and execution immediately follows, by the court awarding the writ of *fieri facias*, commanding the Sheriff to sell so much of the defendants property, as will pay the plaintiff his debt and damages, and runs thus,

PROCESS OF EXECUTION.

Writ of Fieri Facias.

“ GEORGE the Second, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and so forth; to the Sheriff of Oxfordshire greeting, We command you, that of the goods and chattles within
your

your bailwick of Charles Long, late of Burford, Gentleman, you cause to be made two hundred pounds debt, which William Burton, lately in our court before us at Westminster hath recovered against him; and also fifty pounds, which were adjudged in our court before us to the said William, for his damages which he has sustained; as well by occasion of the detention of his said debt, as for his costs and charges to which he hath been put about his suit in this behalf, whereof the said Charles Long is convicted, as it appears to us of record: and have that money before us in three weeks from the day of the Holy Trinity, in our court at Westminster, to render to the said William of his debt and damages aforesaid: and have then there this writ. Witness Sir Thomas Denison, Knight, at Westminster, the nineteenth day of June, in the twenty ninth year of our reign."

SHERIFFS RETURN.

"BY virtue of this writ to me directed, I have caused to be made of the goods and chattels

tels of the within written Charles Long, two hundred and fifty pounds, which I have ready before the Lord the King at Westminster, at the day within written, as it is within commanded me."

THE
UNCONSTITUTIONAL PRACTICE
OF
IMPRISONMENT FOR DEBT.

HAVING given the nation the common law of the land for recovery of debt, I now come to the perjuring, iniquitous, illegal, body snatching, plundering, murdering, *practice* of imprisonment for debt; for *law it never was, nor ever can be.*

COURT OF KINGS BENCH.

Bill of Middlesex.

Middlesex }
to wit.

THE Sheriff is commanded that he take Charles Long, late of Burford, in the County of Oxford, if he may

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be found in his bailiwick, and him safely keep, so that he may have his body before the King at Westminster, on Wednesday next, after fifteen days of Easter, to answer to William Burton, Gentleman, of a plea of *trespass*: [And also to a bill of the said William against the aforesaid Charles, for two hundred pounds of debt, according to the custom of the court of the said Lord the king, before the King himself to be exhibited] And that he have then there this precept. Witness Sir Dudley Rider, Knight, at Westminster, the 18th day of April, in the eighth year of our reign.

SHERIFFS RETURN.

BY virtue of this writ to me directed, I have taken the body of the within named Charles Long, which I have ready at the day and place within contained, according as by this writ is commanded me.

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The after process of *bail* if it can be found, with *justification of bail*; the litigious proceeding of *declaration*, *writ of error*. *Replication*, *protestando*, *demurrer*, *judgment*, *error assigned afresh*, *rejoinder in nulls est erratum*, *opinion of the court*, *writ of capias ad satisfaciendum*, &c. &c. it is not material to me to repeat here, nor have I room; the whole ought to be burnt by the hand of the common hangman, but if any persons are curious enough to read it, they may find it in my first edition; in Blackstone's Commentaries; and in most of the Attornies Guides.

Now for the consequences of this writ of *trespass*. The King's Bench *trespass* is for assault-the plaintiff with swords, sticks, knives, staves, &c. The Common Pleas' writ of *trespass* is for breaking open the plaintiff's close; it is true the Court of Common Pleas have the lawful proceedings for recovery of debt in full use to this day, but the King's Bench starting the writ of *trespass*, to make good for their shop, the Common Pleas, finding that knaves of oppression declined their fair business, they hung

out their sign of writ of *quare clausum fregit*, and the Court of Exchequer hung out theirs of *quo minus*; it is true, the Knight Marshal of the king's household has nothing to do with matters of debt, only of difference between the king's servants; nevertheless, finding three shops set up with good business, and being a bold fellow, he likewise opened a shop, and the public have long been served with the vinegar of the *four thieves*.

The first act of this play that presented itself to me, I printed a three-penny touch, in which was the following letter.

TO THE KING.

SIR,

Permit me to draw your Majesty's attention to a scene, which heaven and earth beheld with horror; a respectable merchant, who had lived forty years in one house with credit, and brought up a numerous family, became, from national misfortunes,

misfortunes, insolvent; and though he honestly gave up his effects to his creditors, yet by one of those acts of iniquity, permitted by the bankrupt laws, was, by one avaricious creditor, thrown into the King's Bench prison. In one month after, he lay upon his death-bed, surrounded by his amiable wife and lovely daughters drownd in tears; when the good man exclaimed against the law that had murdered him; looked on his miserable family with heart-rending anguish, appealed to heaven's high tribunal, and breathed his soul to God. The Almighty presented to my eyes the awful sight! struck the spark of conviction on my mind, and bid me cry aloud for *justice*. But your Majesty's anger will arise, when I inform you, that even after this, the jailer would not suffer the body to go out without paying a guinea for the coroner's warrant, and twelve shillings for the jury. The widow stood aghast at the demand, which flew round the prison, and filled ever breast with indignation: a prisoner lent the money; and when the fees were paid, the widow was suffered to bury the much-loved corpse of her departed happiness;

happiness; but as her support is gone to heaven, who is now to maintain this family? Sir, this is only one instance. Where all the dead bodies of your Majesty's subjects, murdered by imprisonment for debt, to be assembled in Westminster-hall, there would not be room left for the tyrants of the law to behold their handy work.

The writ of *trespass* commanding the Sheriff to take the body of either man or woman, does not confine him to the situation of the person; the dying man's bed, or the woman in labour-pains, makes not the smallest difference to this butchering warrant, I spare, from motives of delicacy, the barbarity, which is a disgrace to manhood to mention, that has been practised towards the lovely sex; but the following well-known case of Major Scott, is one among a hundred instances used towards men.

Morning Chronicle, August, 30, 1786

The fate of Major Scott, the late Deputy-Governor of St. Helena, is sincerely regretted. The circumstances of his death are as follows:

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Having obtained leave of the Company to come home for the recovery of his health, he arrived about three days ago in the General Coote India-man; he lodged some time at the Plough, at Clapham, for the sake of the air, and removed from thence, on account of his extreme illness, to the Carleton Hotel, in Pall-mall, in which place he was taken in arrest for a disputed claim for 2800l. His Surgeons, Mr. Wood and Mr. Bailey, represented to the sheriff's officers, that he could not be removed, but at the utmost hazard of his life; but they were inexorable; the largeness of the debt, they said, made it unsafe for them to admit of a moment's delay. The landlord of the hotel proposed to them to guard their prisoner where he was, and that, for their security, they might bring any number of people they pleased into the rooms. All this was not sufficient to remove them from their purpose; they called a coach, and in dragging him from his bed, after struggling for some time in the agonies of death, his strength failed him, and he died in their arms, We have the satisfaction to add, some gentlemen of the House of Commons,

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of military rank, who were present, shocked with the calamity springing from this instance of the severity of our laws, declared their determination to move the house, in the ensuing session, for the revival of a system so disgraceful to our Constitution, and inimical to every feeling of humanity."

I remarked in my first edition, that as the members of the House of Commons then present might have short memories, it would not be amiss, as there is a print of the fatal circumstance, if all the members of the House had it hung up in their bed-rooms.

There is a print in the shops, representing the King, surrounded with his family, in Dorchester jail, in the year 1792, relieving the distresses of William Pittfield, a debtor sixty years of age, who, with his wife and three children, are setting upon straw, and had endured every misery seven years for an attorney's costs of action. I leave to the King his own thoughts upon this innocent man's sufferings, in violation

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of that Constitution he has sworn to maintain, but for his very visit and relief he afforded, I forgive what is past; let his heart turn with affection towards his subjects.

The GHOST an ELEGY,

Wrote on a Gentleman who died with grief and disappointment in the King's Bench Prison, when the Insolvent Bill was lost, August, 1784.

'T WAS on that sad and solemn night,
When hope reluctant fled,
And many a hapless prisoner lay
Desponding on his bed.

An awful silence reign'd around;
When, from his lonely tomb,
A pale-ey'd ghost was seen to glide
Along the deep'ning gloom:

And thrice around these dreary walls,
A forrowing look he cast;
And thrice he cried, "the fatal day,
The fatal hour is past!"

"Ah, hapless Britain, wretched land!
From thy ill-fated shore,
Lo, mild humanity is fled,
And Mercy rules no more.

Each soothing power of social joy
 No more shall sweetly smile;
 Nor hope with her enchanting train
 Misfortune's frown beguile.

And O fair freedom once our boast,
 Once guardian of our land !
 Say wilt thou crouch a vassal vile
 Beneath oppressions hand ?

No ! from degen'rate Britain far
 Beyond th' Atlantic main,
 Thou bidst the sun of glory rise,
 To Bless each happy plain.

Whilst venal power and tyrant laws
 O'er Britons bear the sway ;
 Who tamely bend beneath the yoke
 And slavishly obey.

With empty forms and shadows pleas'd
 The substance they forego,
 And from delusion's honied cup
 Drink pois'nous draughts of woe.

" See power despotic, oft you cry,
 O'er France exulting reign !
 See a proud tyrant lawless rule
 The wretched realms of Spain !"

But for a moment turn your view
 To prospects of your own ;
 Beneath a worse despotic sway,
 Surrounding millions groan.

Each guilty wretch of gold possess'd
 Becomes a tyrant here ;

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Whilst titled miscreants—regal pride
Disdains soft Pity's tear.

Your wounded bosoms deeply feel
The keen inflicted smart,
Your tender offsprings' plaintive cries
Too deeply pierce the heart.

Full many a secret sad presage
Oft told my anguish'd mind,
Ere the cold hand of death my frame
To kindred clay consign'd;

Oft told me 'midst these direful cells
Thes seats of grief and pain
That all our trust in earthly aid
Was fugitive and vain.

Blest God of Mercy ! let my soul
To thee its tribute pay,
Who summon'd, ere this fatal hour,
My soul from earth away.

But short thy triumph cruel man,
Who plann'd my miseries here ;
How wilt thou at the judgment day
Before thy God appear ?

Ev'n whilst on earth, thy tortured soul
No peace no joy can know,
Though all the wealth that India boasts
Into thy coffers flow.

But ah, adieu ! a long adieu !
Sad children of despair,
“ The bell strikes one ! The Sceptre figh'd,
And vanished into air.

Now for the grand remedy against Imprisonment for Debt, and all other evils, Doctor Young in his night thoughts, says "God has given us heaven above for heaven enjoyed below" this was spoke like an honest man, does God honor, and dignifies human nature, it comes exactly to the point in question. Milton, Pope, Voltaire, and other great writers of all Nations have set forth the love of God to mankind, and the happy state for which he has formed them on the earth, but which they are deprived of by tyranny that requires the strong hand of God himself to crush.

God has commanded "Ye shall not oppress one another." Imprisonment for debt is oppression upon creditor and debtor, the creditor loses his debt, and goes to prison for his attorney's costs, the debtor pines with misery and want, and disturbs God's throne with his cries and reproaches; I set my face against every species of oppression, and it is my will and pleasure that Imprisonment for Debt may be immediately abolished.

Was there any justice in England there would not be occasion for a *particular interference*. "The Law gives a remedy for every wrong" the remedy against false imprisonment is the *habeas corpus act*, which declares it discharges all but criminals, the Judges make a turnpike toll of this act, when a debtor goes to Judges Chambers with this writ, he
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is not examined as to his legality of Imprisonment, but he waits two or three hours, 'till a sufficient number of debtors are assembled, when the Judge after enjoying his bottle with some other upwright Judge, the commitment warrants being ready made out to transfer the debtors to the King's Bench, signs them altogether, with as much unconcern as he does death warrants at a County Assize, which is only a marginal note—let him be hanged by the neck, if he was to give his footman such an order for one of his dogs, the man would think him a brute, but the hanging poor rogues passs of without concern, and as for the pain that goes to the heart of Christ, when a man is executed, it is beneath the notice of Law Lords; they treated him with a hanging match of twenty at one time, on their ingenious invention the new drop; but when they pass sentence on a man convicted of what they call high Treason, they say “You are to be taken from hence to whence you came from, and thence to the place of execution, and then to be hung by the neck, but not till you are dead; you are then to be cut down, and your bowels taken out, and burnt before your face, your head to be cut off, and your body at the disposal of the King, and the Lord have mercy on your Soul.” The Lord does not ask them what mercy he will have on the man's soul, and would be much obliged to them when they have any cruel work in hand, if they would not *make quite so familiar with his name.*

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The present set of Ministers do not think it sufficient to make up their measure of iniquity without impiety, they proclaim a Fast, that *thet may smite with the fist of wickedness*, of the Fast they make a feast, but by depriving the poor whom they have distressed of a day's work they make them fast indeed, their prayers however are only curses upon their oppressors heads. It seems God himself cannot escape being brought in an accessory to their oppression of the poor, the Minister had the assurance to say in Parliament, that Providence had given a scarcity of Provisions; it is necessary that God should come forward by himself, or proxy, and prove his innocence, or he may stand the chance of a seven years state trial at seventy thousand pounds expence; these Ministers are Christians they bow to Christ in the sight of men that they may have credit for their actions, there are however times and seasons, when Christ is not disposed to be played with, one instance I set down.

Amureth the second Sultan of the Turks, made a Peace with the Christain King of Hungary, the Turk swore it on the Alcoran, the Christain on the Evangelists, Amureth devoted his time to pleasure, with a beautiful Circassian woman in his Seraglio, and placed his Son Mahomet on the Throne, who holding the reins of Government
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with a feeble hand, gave the King of Hungary a prospect of entering the the Turkish dominions, but unwilling to go without a holy sanction, he applies to the Pope for his absolution from his oath, and his benediction; which the Pope seeing for the interest of Christianity readily granted; the Hungarian took the field with two hundred thousand men; the Turks were alarmed. and not having a confidence in Mahomet on the throne, they by the Divan demanded their Sultan Amureth, who feeling the propriety of it, told the Divan he would meet them next day, which he did with his Mistress; he then asked, which was the man that would not have given up public business for such a companion? on their keeping silence he said, I now let you see I am greater than either of you, and taking her by the hair of her head, and drawing his Scimeter with one stroke he cut off her head, now says the Sultan to the field. He led on his Turks against the Christians, at the first onset the Turks gave way, which grieving Amureth to the heart, he took out from his breast the parchment, on which the King of Hungary had signed the Peace, and sticking it on the point of his scimeter, he held it towards heaven with this request, thou crucified Christ! this is the league thy followers have sworn in thy name to maintain, now if thou art God, which they say thou art, this day vindicate thy honor and mine,

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the Turks felt themselves inspired, rushed on to the battle, gained a complete victory, and killed the King of Hungary in the field; *notwithstanding the Pope's benediction.*

The Christian religion has been made a fine trade of—one fellow sits down in Saint Peter's chair, with a tripple crown, and propogates Christianity, with fire and sword the christian kings join him, and carry on a holy war to cram Christ down the throats of unbelievers with the point of the sword, but in England the Christian Religion flourishes, what a charming sight to see an Archbishop of Canterbury, with his lawn sleeves, and and a diamond ring on his finger, displaying the beauties of Christianity; the rich sit comfortably enough, but as the poor to whom the gospel was to be preached, cannot get near enough to hear so fine a man, I recommend to his Grace to invite them to dine with him at Lambeth Palace, and after dinner over a mug of strong beer, to explain those knotty points. It is high time the Messiah was come to teach the Judges Law, and the Bishops Gospel.

The Lord himself shall set judgement in the earth.

FINIS.



